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# *THE INTERIM*

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HELENA, MONTANA

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## CHANGES TO BRANCH WEB SITE

Branch Web Site Is Changing...Beginning September 1, the organization and appearance of the Legislative Branch web site will be changing. A legislative staff group has been working over the summer to redesign the site to improve the presentation of information and to make it possible for those directly responsible for the content on the site (committee staffers, etc.) to make timely updates. The new version of the site will be found at the old address and also at a simplified address: <http://leg.state.mt.us>.

Since site maintainers are just in the process of learning the required technologies, it will be a few months before all new pages are fully functional. However, all crucial information will be transferred from the old site to the new one.

We will appreciate feedback and suggestions as we work to improve the web site. E-mail addresses for people responsible for various pages will be posted on those pages, and we encourage you to let us have your ideas to help make the site work as well as possible for all of us.

General comments or suggestions can be directed to Beth Furbush, Legislative Librarian, at (406) 444-3064 or at [efurbush@state.mt.us](mailto:efurbush@state.mt.us).

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Committee to Meet October 1...The Education and Local Government Committee will meet on Friday, October 1 in Room B7 of the Federal Building in downtown Helena. The meeting will begin at 9 a.m. Agenda items at this time include:

- ▶ a presentation from the Education Commission of the States;
- ▶ a presentation on the Montana Commission on Teaching;

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- ▶ an update on the impending lawsuits against counties over violations of the federal Voting Rights Act; and
- ▶ reports from the tuition working group and the Local Government Subcommittee.

Subcommittees to Meet...The Postsecondary Education Policy and Budget Subcommittee will meet on Thursday, September 30 in Room B7 of the Federal Building, beginning at 9 a.m. Among the issues to be discussed are the Montana Tuition Assistance Program, the SJR 16 study of University System funding, and the development of an interim work plan. For more information about the Subcommittee or the meeting, please contact Sandy Whitney, Legislative Fiscal Division, at 444-2986 after September 13.

The Local Government Subcommittee will meet on Thursday, September 30 in Room 489 of the Federal Building, beginning at 1 p.m. The Subcommittee will discuss the study plan for House Joint Resolution 29, a study of laws affecting local governments and local officials, and the study plan for House Joint Resolution 38, a study of juvenile probation officer employment and salary issues.

For further information about the Education and Local Government Committee or the Local Government Subcommittee, please contact Connie Erickson, Legislative Services Division, at 444-3064 or by e-mail at [cerickson@state.mt.us](mailto:cerickson@state.mt.us). Meeting notices for the Committee and the two Subcommittees will be mailed to all interested persons the week of September 13.

## ENVIRONMENTAL QUALITY COUNCIL

EQC to Meet in Libby...The EQC will meet in Libby on September 22 and 23 to begin its interim study process in earnest. The EQC met in May and mapped out its interim study topics and selected subcommittees. Those study topics include: the Montana Environmental Policy Act, eminent domain laws, water policy, stream corridor management, growth and land use, and environmental trends and indicators. The EQC staff is currently conducting background research on each of the study topics. The research information will be presented to the EQC at the Libby meeting.

In addition to these study topics, the EQC has legislative oversight for the Department of Fish, Wildlife, and Parks, the Department of Environmental Quality, and the Department of Natural Resources and Conservation.

For more information please contact the EQC staff at 444-3742 or via e-mail at [teverts@state.mt.us](mailto:teverts@state.mt.us).

## BUSINESS, LABOR, AND AGRICULTURE COMMITTEE

To Hold First Meeting...As summer fades, the beginning of fall signifies more than just football season. The Business, Labor, and Agriculture Committee (BLAC) will hold its first meeting on Friday, October 8 in Helena.

The agenda for the first meeting is shaping up as an ambitious one that represents the heavy work load facing Committee members this interim cycle. At the first meeting, members can expect to approve an overall interim work plan and the individual study plans, hear from interested persons and groups who have been working over the summer on the Government Competition Study (HB 515), and interact with agencies who are looking forward to the opportunity to appear before the Committee.

In an effort to facilitate the exchange of information between the executive branch agencies assigned to the Committee, meetings have been scheduled with a number of Departments to develop a constructive mechanism that offers both an educational opportunity for legislators and members of the public and an occasion for the agencies to present some of their issues seen as likely candidates for legislative action. Additionally, a number of agencies under the Committee's purview have proposed new rules or have filed notices to amend existing rules. A portion of the October meeting will be devoted to an explanation of the review process and members will be asked to determine the scope of their new role as rule reviewers.

These Committee responsibilities will be an on-going activity throughout the interim and are intended to be structured so that as the interim moves forward, new ideas supplement existing knowledge.

Finally, even though the meeting promises to be a full day, Committee staff is cognizant of the fact that pheasant season opens October 9. We will make every effort to ensure anyone partaking in opening day activities will be out the door by 5 p.m.

Enjoy what remains of the summer. If you have an agenda item you would like to see considered by the BLAC, or have any additional questions about the Committee's activities, please feel free to contact Gordy Higgins, Legislative Services Division, at 444-3064 or by e-mail at [gohiggins@state.mt.us](mailto:gohiggins@state.mt.us).

## MENTAL HEALTH MANAGED CARE SUBCOMMITTEE

Committee Holds First Meeting...The first meeting of the Mental Health Managed Care Subcommittee, authorized by HJR 35, was held August 19. The Committee has eight members drawn from the LFC; the Children, Families, Health, and Human Services Committee; and the Legislative Audit Committee. The members are Senator Chuck Swysgood, chair; Representative Lila Taylor, vice-chair; and Senators Mignon Waterman, Bob Keenan, and Eve Franklin; and Representatives Loren Soft, Mat

McCann, and Beverly Barnhart.

Subcommittee Hears Presentations on Mental Illness...The Subcommittee heard presentations on serious and disabling mental illness in adults and serious emotional disturbance in children from mental health professionals and from family members of persons with severe mental illness. Serious mental illness (schizophrenia, bi-polar disorder, major depression, panic disorder and obsessive compulsive disorder) is physiologically based and causes alterations in brain chemistry and brain functioning, which will affect a person's behavior. For instance, a person with schizophrenia may have hallucinations, such as hearing voices, and delusions. In these instances, they are not able to distinguish reality from the hallucinations and delusions they experience. Medications will help control these symptoms of serious mental illness. However, persons with severe mental illness frequently need additional services beyond medication. These services may include supportive psycho therapy, vocational rehabilitation, and socialization skills. More than likely, adults will need assistance in finding and maintaining housing and other basic needs. The families of children may also need supportive psycho therapy and assistance in accessing services for their children.

Subcommittee Hears About New Mental Health Care System...Randy Poulsen, Mental Health Bureau of the Department of Public Health and Human Services (DPHHS), briefed the Subcommittee on the status of the public mental health care system that started up on July 1. It is a managed fee-for-service system that has four elements:

- 1) the Medicaid program and mental health services plan administered through the Mental Health Bureau at DPHHS;
- 2) the eligibility function determined through the Public Assistance Bureau at DPHHS;
- 3) a clinical function conducted by the Mountain Pacific Quality Health Foundation, a peer review organization in Helena that conducts prior authorization for out-of-home services and acute hospitalization and retrospective utilization review; and
- 4) claims payment contracted through Consultec in Helena.

DPHHS is experiencing some start-up problems with the new system but is working on them. The Subcommittee will monitor the Department's progress in resolving them.

Panel Provides Information on Children's Services...The Subcommittee also heard a panel presentation on children's mental health services that addressed how children enter the mental health services system, how agencies provide services, how agencies that "share" children coordinate and cooperate in planning and delivering services, and concerns about the system. Panel members represented education, foster care services, juvenile corrections, developmental disabilities, and families. Several of the notable concerns expressed by panel members included:

- ▶ designing the mental health system so that it provides incentives for agencies

to cooperate;

- ▶ the potential for cost shifts from mental health to other programs (specifically cost shifts from Medicaid, which is 70% federally funded, to other programs that are 100% general fund);
- ▶ availability of services for some populations, such as children who are both developmentally disabled and seriously emotionally disturbed;
- ▶ lack of flexibility in funding wrap around services;
- ▶ adequacy of funding and the potential of reducing services to maintain expenditures within appropriations;
- ▶ the mental health entity is a funding source, not an entity that could be held accountable for care;
- ▶ the length of time it will take for treatment teams (multidisciplinary, multi-agency) to naturally develop;
- ▶ lack of prevention, education, and early intervention; and
- ▶ lack of transitional services for 18 year olds to the adult services system.

Committee Hears from the Public...The Committee heard public testimony and, as a result of the public comment, plans to hear a panel discussion by mental health service providers at a future meeting. The Committee also discussed a study plan that will be presented at its next meeting on October 6. The Committee will also hear a panel discussion on adult services, similar to the children's services panel, at its October 6 meeting.

If you have questions about this study or would like to be on the interested persons list for the HJR 35 interim study, please contact Lois Steinbeck, Legislative Fiscal Division, at 444-5391 or by e-mail at lsteinbeck@state.mt.us.

## REVENUE AND TAXATION COMMITTEE

Committee to Meet in September...The Revenue and Taxation Committee is scheduled to meet Thursday, September 23 at the Department of Transportation (Room 201), 2701 Prospect Ave., Helena. The major item on the agenda is a presentation from the Department of Transportation. Representatives of the Department will provide a general overview of the Department's organization, mission, goals, and program activities. The public is invited to comment on the activities of the Department of Transportation.

Other tentative agenda items include:

- ▶ state housing trust funds and options for funding;
- ▶ revenue report on fiscal year 1999 general fund collections;
- ▶ status of legal challenge by Montanans for the Coal Trust to the enactment of HB 260, concerning the imposition of a coal producer's license tax as an illegal diversion of revenue from the coal severance tax trust fund;
- ▶ Department of Revenue report on the implementation of SB 184

(revised taxation of residential and commercial property): taxable valuation, "unified" property tax reimbursements to local governments, and rules;

- ▶ proposal to examine alternatives to current debt ceiling limits for local taxing jurisdictions; and
- ▶ Committee work plan for the 1999-2000 biennium.

For more information about the September meeting or about the Revenue and Taxation Committee in general, contact Jeff Martin, Legislative Services Division, by calling (406) 444-3064 or by e-mail at [jmartin@state.mt.us](mailto:jmartin@state.mt.us).

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Committee Meets First Time...On August 20, the Children, Families, Health, and Human Services Committee held its first meeting. The Committee's primary roles are the monitoring and administrative rule review of the Department of Public Health and Human Services (DPHHS). The Committee adopted a study plan that will concentrate on the areas of developing proposals for the tobacco settlement; learning more about and seeking solutions to the dental access crisis in Montana; and following up on issues related to the Temporary Assistance to Needy Families program, such as the increase in uninsured population, sanctions, and the new issues to face in the evolution of welfare reform. The issues of the Children's Health Insurance Program (CHIP), the aging population in Montana, child and family services, and the child support guidelines were raised, and the Committee will be monitoring those issues. The Committee also received a reports regarding the Mental Health Advisory Council from Senator Keenan, the HJ 35 Mental Health Managed Care Subcommittee from Senators Keenan and Franklin, and a status report of the public mental health system by DPHHS.

The Committee discussed briefly its administrative rule review function, specifically the network adequacy rules that will be adopted soon and the CHIP rules which have not been filed yet. No action was taken.

Committee Hears About Project Challenge...The Committee received an update on Project Challenge and will be requesting the transfer of the monitoring of that program to CFHHS from the State Administration, Public Retirement Systems, and Veterans' Affairs Committee that monitors the Department of Military Affairs.

Committee Hears from DPHHS...The Committee heard an overview of issues that DPHHS is interested in having input on from the Committee. The Committee also assigned members to various other committees working on related issues. Representatives Lawson and Schmidt will be working with the Disability Services and the Consensus Council. Representative Soft and Senator Berry will be working with DPHHS on the nonassumed counties study. Senator Berry and Representatives



Schmidt and Soft will form a subcommittee on the tobacco settlement, and their names will also be forwarded to the Governor for potential appointment to the Governor's Advisory Council on Tobacco Use and Prevention. Senators Franklin and Keenan also serve on the Health Care Advisory Committee and Senators Keenan and Waterman and Representative Soft will serve as representatives of CFHHS on the HJ 35 Mental Health Managed Care Subcommittee with Senator Franklin who was appointed from the Legislative Finance Committee. This integration and overlap of membership should assure that the issues are integrated, and that the Committee and the Legislature will be well informed of the operations and issues at DPHHS.

Committee Hears from the Public...The Committee heard public testimony regarding Lifespan Respite Care and its projects and was impressed by their willingness to bring solutions back to the Committee at a future date. The Committee also received additional information on the CHIP pilot project that is being administered through Blue Cross and Blue Shield who have been extremely successful and helpful in designing CHIP. However, CHIP outreach is still a major concern.

Other issues raised by the public included:

- ▶ economic justice, gambling, and violence;
- ▶ the increasing number of uninsured people, especially people coming off of TANF;
- ▶ the use of the tobacco settlement for prevention and treatment;
- ▶ dental care access;
- ▶ the need for better data; and
- ▶ the combined CHIP and Medicaid application.

The need for greater CHIP outreach was highlighted by many, and the Committee will receive more information on CHIP, including the outreach efforts at its next meetings after CHIP is launched on October 1. The Committee will meet November 19 and will hear from the mental health committees, Project Challenge, and other reports required by HB 2. Public testimony will be received at each meeting.

If you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, e-mail: [sfox@state.mt.us](mailto:sfox@state.mt.us), or mail to: Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## DISTRICTING AND APPORTIONMENT COMMISSION

Court Appoints Fifth Member...On August 3, the Montana Supreme Court appointed Dr. Janine Pease Pretty On Top as the fifth member and presiding officer of the Montana Districting and Apportionment Commission. Dr. Janine Pease Pretty On Top is the president of Little Big Horn College at Crow Agency.

The appointment was unanimous, but Justice James C. Nelson and Justice Terry N. Trieweiler dissented regarding the process of the appointment which was held in private conference. Chief Justice Jean Turnage, Justice Jim Regnier, Justice William

Leaphart, and Justice Karla M. Gray concurred in the use of a private process.

Commission to Meet This Fall...The Commission will likely hold a meeting this fall. The Commission's charge is to redistrict the state for both the congressional and legislative districts following the 2000 census. By January 1, 2001, the state will learn whether an additional congressional seat will be gained in the reapportionment of congressional seats. The census data is expected in the first months of 2001, when redistricting will begin in earnest. In the meantime, the Commission will be preparing thorough background research, adopting a timetable for the process, selecting criteria, and making decisions on data and methodology.

If you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, e-mail: [sfox@state.mt.us](mailto:sfox@state.mt.us), or mail to: Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## TRANSITION ADVISORY COMMITTEE

TAC to Hold First Meeting...The first meeting of the Electric Utility Restructuring Transition Advisory Committee (TAC) in the 1999-2000 interim is scheduled for Friday, September 24, at the Federal Building in Helena, which is located at 301 South Park (a block beyond the southern terminus of the Last Chance Gulch). The twelve legislative members will choose a presiding officer and the whole group of 24 will decide on future meeting dates and places as well as the roster and priority of substantive matters that the TAC will consider for the remainder of the interim. Among the pertinent bills that passed in the 1999 session are Senate Bill 406, enabling the creation of a buyers' cooperative, and House Bill 211, allowing local governments to become "default suppliers" in the event residential customers elect not to choose their own supplier of electricity in a later phase of the transition period. (Interested persons are invited to view or download legislation by going to the state's home page--<http://state.mt.us>--and clicking on the 1999 Legislative Session.)

Persons planning to attend the meeting are advised that the only accessible entrance is on the south side of the building, adjacent to the parking lot, and that there are security guards and metal detection devices on the way into the building. Visitors to the building will be issued a guest pass after signing the register.

The following is an agenda for the meeting:

- 10:00 a.m.      Welcome and introductions - Senator Thomas
- Review of agenda
- Adoption of Minutes from last TAC meeting (Jan. 21, '99)
  
- 10:15            Administrative Matters
- Selection of Chair, and vice-chair (by vote of legislative members)
- Discussion of terms of service of current TAC members
- Overview of Committee Finances: budget authorization, sources

and shares of funding support, and policy directive(s) re: TAC expenditures  
Brief review of statutory duties under SB 390 (1997) and related legislation (1999)

- 10:45      Brief Reports and Updates from TAC members & others  
Consumer Counsel - Rep. Quilici, and Mr. Bob Nelson  
Utilities - Mr. Ed Bartlett  
Cooperatives - Mr. Dave Wheelihan and Mr. Warren McConkey  
Public Service Commission - Mr. Bob Anderson  
Others: including Gail Kuntz, Bonneville Power Administration;  
Deb Young, Montana Power Co.
- NOON      Lunch Break
- 1:15      Presentation & Discussion of Draft Work Plan (Staff and TAC Members)
- 2:30      Public input on scope and execution of work plan; ideas for consolidation or expansion of issues
- 3:00      Adoption of Work Plan: guidelines, meeting dates, travel, etc. (Discussion as needed.)
- 3:30      Other business....adjourn

For further information, call Research Analyst Stephen Maly, Legislative Services Division, at 444-3064, or send an e-mail message to [smaly@state.mt.us](mailto:smaly@state.mt.us)

## LEGISLATIVE COUNCIL

Council to Study Televising the Legislature...The Legislative Council itself is the locus of an interim study of the feasibility of televising legislative proceedings (HJR 18). A draft plan will be presented by Research Analyst Stephen Maly at the Council's meeting in Helena on September 17. The study will address multiple objectives as well as production and delivery options.

Which committee hearings during a legislative session might warrant routine TV coverage? Should activity be broadcast live or held over to a time more convenient to home viewers? What is the optimal means of broadcasting debates on the House and Senate floors to Montana citizens: via satellite, cable, low power transmitter, or audio/video "streaming" over the Internet? These are just a few of the questions the Council will grapple with over the course of the interim.

The work plan will recommend that a group of legislators take a field trip to Olympia this fall to observe firsthand how Washington State's Public Affairs Network

(TVW) provides services comparable to C-Span, the networks that cover both House and Senate in the U.S. Congress. [For a preview of TVW's setup and programming, visit [www.tvw.org](http://www.tvw.org) on the Internet.] Washington is one of 18 states that currently broadcast legislative proceedings by some means to the general public.

For more details--or to contribute information to the study effort--please contact Stephen Maly at (406) 444-3064 or [smaly@state.mt.us](mailto:smaly@state.mt.us)

## LAW, JUSTICE, AND INDIAN AFFAIRS COMMITTEE

Committee Initiates Judicial Liaison...The passage and signing of Senate Bill No. 11 (the interim committee restructuring bill) ushered in a new era not only for the interim activities of legislators and staff, but for other branches of government as well. For the first time in recent memory, a legislative interim committee will have formal, statutory ties to the state Supreme Court and district courts. One of the specific charges assigned the Law, Justice, and Indian Affairs Committee (LJIAC) is to act as a liaison with the Judiciary.

The Legislature enacts around 600 new laws or adjustments to existing laws every session. Eventually, some of these laws find their way to district courts and the Supreme Court for judges to interpret. While this relationship between the legislative and judicial Branches of Montana state government has prevailed for as long as Montana has been a state, the two branches rarely seem to communicate directly except during the biennial "State of the Judiciary" address tendered by the Chief Justice every session.

The LJIAC has before it a golden opportunity to enhance the relationship between the legislative and judicial branches of state government by establishing a formal, permanent line of communication with the Judiciary. To that end, the LJIAC staff met with Montana Supreme Court Chief Justice Jean Turnage in August to discuss the Committee's formation, its statutory mandate, and ways that both the Supreme Court and the Legislature might benefit from the Committee's liaison function. Staff's discussion with Chief Justice Turnage focused on three major potential benefits.

- 1) Every legislative session, the Senate Judiciary Committee reviews areas of statute that the Supreme Court has found to be invalid, flawed, incomplete, or unenforceable. Now, the LJIAC can be the entity that reviews the Court's opinions dealing with specific areas of statute, make any necessary public policy decisions, and request that legislation be drafted to rectify problems.

Not only will this spare the Senate Judiciary Committee valuable session time, but it will afford a group of legislators (some of whom serve on the Senate Judiciary Committee) an opportunity to more thoroughly examine issues within the purview of the Legislature that arise as a result of Supreme Court decisions.

- 2) The LJAC can provide a forum for discussion surrounding any areas of statute that the Court is seeing consistently debated in cases that appear before it. The LJAC may be able to clarify legislative intent or request legislation to alleviate confusion and minimize misinterpretation.
- 3) Educating the legislators who serve on the LJAC with solid background information on the Supreme Court will facilitate the Committee's liaison mandate. Staff and Chief Justice Turnage also noted that an added benefit may be providing members of the Court with an insight into the function of the Legislature and an education in how the two branches of government can work together. While Chief Justice Turnage served in the Legislature before his election to the Court, that is certainly not a prerequisite-- indeed, "state legislator" rarely appears on a Supreme Court Justice's resume.

While each of the three branches of state government have distinct duties and responsibilities, none of them operate in a vacuum. The relationship between the executive and legislative branches is well-established, often adversarial, in the limelight during every session of the Legislature, and a major focus of legislative activity during the interim. The Legislature's link to the Judiciary, however, has been more subtle and rarely addressed during the interim, even though the two branches are so intimately connected by the Montana Code Annotated.

Chief Justice Turnage expressed enthusiasm for the opportunities that the LJAC offers, agreed to bring the issue to the Court's next scheduled conference, designated Court staff attorney Christine Wethern as the Court's contact, and communicated his willingness to participate in discussions with the Committee as his time and duties would allow. To initiate the LJAC's liaison function, the Committee will meet in Helena in December to receive a primer on the Supreme Court, including information on how it functions and how and when decisions are made.

In addition, the LJAC will invite the state's district court judges to each of its meetings to comment on caseloads, types of cases, and problems the judges are encountering.

To Meet in Billings...The LJAC's next meeting will be September 16-17 in Billings at which time the Committee will tour the Women's Prison, map out its plan for the rest of the interim, and meet with members of the Montana-Wyoming Tribal Leaders Council.

For agenda information or other information about the Committee, contact Committee staff Leanne Kurtz at 444-3064 or via e-mail at [lekurtz@state.mt.us](mailto:lekurtz@state.mt.us).

## **STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS COMMITTEE**

Committee to Meet at Fort Harrison...The State Administration, Public Retirement

Systems, and Veterans' Affairs Committee (SAIC) will conduct a two-day public meeting at the Regional VA Medical Center at Fort Harrison in Helena on September 9-10. The meeting will be held in the recreation conference room in the main VA hospital building. Major agenda items include:

- agency overview briefings from the Department of Military Affairs, the Veterans' Affairs Division, the Department of Administration, the Public Employees' Retirement Board, the Secretary of State, and the Office of the Commissioner of Political Practices;
- presentations on state contracting laws and study issues; and
- discussion and adoption of a committee work plan for the next 12 months.

Agency overview briefings will cover each agency's organization, mission, and goals, updates on each agency's recent activities and specialized programs, and consideration of any issues raised for future SAIC action.

In addition to agency monitoring functions, the SAIC's responsibilities encompass studies of state contracting laws and practices and of public employee disability benefits and postretirement health care costs.

Committee to Adopt Work Plan...The SAIC will be considering four work plan options for structuring its activities. The four options are to:

- 1) establish no subcommittees so the full Committee conducts both the agency monitoring and the study functions;
- 2) establish a subcommittee to do the agency monitoring functions or explore key policy issues raised within the Committee's area of jurisdiction, such as veterans' issues or public retirement issues;
- 3) establish two subcommittees to conduct the studies so the full Committee can perform the agency monitoring functions and examine key policy issues; or
- 4) establish no subcommittees but direct staff to research each study topic, analyze issues, and develop options to later present to the full Committee for consideration and action.

Public participation is welcome and time will be reserved for public comment. For a complete agenda and more information, please contact Sheri Heffelfinger, Legislative Services Division, at 444-3596 or by email at [sheffelfinger@state.mt.us](mailto:sheffelfinger@state.mt.us).

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### STAND UP AND BE COUNTED

by Susan Byorth Fox, Research Analyst  
Legislative Services Division

*"Do what you can, with what you have, where you are."*

Theodore Roosevelt

### INTRODUCTION

The Districting and Apportionment Commission appointments are now complete (see related story) and the Commission can begin its preparation for receipt of the census results that trigger the reapportionment and redistricting of congressional and legislative districts. There are a number of related issues that may be of interest to all of us who are affected in one way or another by the number of congressional seats, the population apportioned to each legislative district, and federal funding allocated to our state.

Depending on whose research you read, Montana may or may not gain back its second congressional seat. We will know for sure as soon as the results of the census are delivered to the President of the United States on December 31, 2000, based on the enumeration on April 1, 2000. The President then reports the census counts to the Clerk of the House of Representatives who in turn reports to each state's governor. Currently, any estimate is based on a population projection and is only as good as the numbers on which it is based. Two variables that can make a difference are whether and how overseas populations are included and the extent to which adjustments are made for the census undercount.

In the 1990 census, the undercount for the nation was estimated at 1.6%, although not evenly distributed. For example, the state of Montana undercount was estimated at 2.41%, and the undercount for American Indians in Montana was even more detrimental, estimated at approximately 9.2% by the Census Bureau and even higher by some tribes. Half of the undercounted were children. This is a critical issue and affects our state, both in the congressional apportionment and in the legislative apportionment.

The specter of undercount raises a couple of related issues:

- 1) how is the census taken and how critical is the decision whether to adjust the numbers using some sort of sampling procedure;
- 2) what are the ramifications in terms of a possible additional congressional seat and the population apportioned between legislative districts; and
- 3) what are the ramifications on federal funds allocated to Montana?

## HOW IS THE CENSUS TAKEN AND HOW CRITICAL IS SAMPLING?

The census involves a data collection from 100 percent of the households and housing units (not from a sample) to determine how many people are in the United States. On January 25, 1999, the U.S. Supreme Court in a 5-4 decision, ruled that a 1976 amendment to the Census Act bars the use of statistical sampling to correct the decennial data used to apportion seats among the states that comprise the U.S. House of Representatives. This means that the first census number, based on the 100 percent data collection, must be used for apportionment purposes.

Conversely, the Supreme Court opinion acknowledged that the 1976 amendment to the Census Act requires the use of statistical sampling for non-apportionment purposes, if it is feasible to do so. This is a great point of political contention, because this gives the Census Bureau, and also the states, discretion regarding non-apportionment uses and feasibility. The Census Bureau's operational plan, in addition to the 100% enumeration, also includes an extensive statistical operation, called the Accuracy and Coverage Evaluation (ACE), to measure and correct overall and differential coverage of U.S. residents in Census 2000. This operation consists of a scientific sample of approximately 300,000 housing units that will use regional groupings to generate corrected counts.

The ACE is equivalent to, but different from, the Post Enumeration Survey (PES) from past censuses that reveal the level of undercount. The Secretary of Commerce chose not to use the PES to adjust the 1990 census, although he had the authority pursuant to *City of New York v. U.S. Department of Commerce*. In 2000, the ACE will not be used to adjust the census figures for reapportionment purposes. However, it will be made available to federal agencies and state and local governments, including the Montana Districting and Apportionment Commission, for other purposes.

Sampling is not a new discipline. It is a scientific, mathematics-based technique of estimating the number or characteristics of an unknown group by using exact numbers and facts gathered from a known group. The Supreme Court based its opinion not on the merits of sampling itself, nor even on the "actual enumeration" language of the U.S. Constitution, but on the reading of federal census law and congressional intent. There are numerous and contradictory legal interpretations of the Supreme Court decision and the states will have to spend some time on the interaction between the decision and a state's own constitutional and statutory frameworks.

## WHAT ARE THE RAMIFICATIONS FOR AN ADDITIONAL CONGRESSIONAL SEAT AND FOR LEGISLATIVE DISTRICTS?

The Supreme Court was clear that adjusted data could not be used for apportionment of the U.S. House of Representatives. In research based on the 1996 estimated census, it looked like Montana was in good position to regain a second House seat. By the time the research was reanalyzed based on the 1998 estimated census,



Montana appeared to not be in position for return of a second seat. The analyses were limited in their use of projection data, their use of the 1990 PES as applied to projection data, and the lack of overseas residents considered in the calculations. An analysis by Polidata recently predicted that Montana would not gain a seat, although an analysis in a Congressional Research Service document illustrated how Montana could gain a second seat, given certain assumptions.

If Montana experiences the same boom and bust cycle as the state did during the eighties, a second seat would be unlikely. If Montana's growth meets rates from 1990 to 1996 or exceeds recent rates, Montana is more likely to gain a seat. From 1990 to 1996, Montana's population increased 10.1% due in great part to net migration into the state, an average change of 1.6% a year. However, from July 1997 to July 1998, the percentage change was 0.2%, indicating a plateau and slower growth. The birth rate of 1.24 % was lower than the death rate (0.89%), which counts towards some natural growth, but the migration in that same year was -0.21%. Most of the growth is attributable to the seven largest counties and the adjacent low-population counties. The majority of counties, primarily in eastern Montana show low population gains or population loss, especially of younger persons, which will also effect the birth rates negatively.

The level of growth since 1990, especially in the last years of the decade, will be the greatest variable in our population and subsequent count. The only element that Montana can affect at this time is to assure the most accurate and complete census count as possible on April 1, 2000. The method of equal proportions is very susceptible to small differences in population, even less than 50,000 persons, so indeed every person counts towards a second congressional representative. For us in Montana, we will await the notice from the Clerk of the House of Representatives to find out whether to submit our entire state as our single congressional district or whether the Districting and Apportionment Commission must redistrict our state back into two districts.

Regarding legislative redistricting, the issue of the ACE adjustment becomes relevant. The Districting and Apportionment Commission will have to consider the issue of and choose between the two different sets of numbers and the ramifications on any plan. The Southeastern Legal Foundation representative, Matthew Glavin, who was an appellee in the recent Supreme Court decision, has already announced intention to sue the Census Bureau over the legality of the new plan that includes ACE and has been quoted as saying that he will sue any state that uses data for redistricting that has been changed using sampling. A challenge cannot be filed until a state actually uses the numbers or enacts a law requiring them to do so, so the battle likely will not come early enough to guide redistricting. Although no one has threatened to do so, the possibility remains that a lawsuit could be filed if a state or local government did not use adjusted numbers as well. A claim of vote dilution could as easily be made because the populations that adjustment may affect are vulnerable to undercut: both inner city-dwellers and those from remote, rural areas; minorities, in Montana's case especially Native Americans residing on reservations; immigrants; and renters. In

redistricting in general, it has become a truism that no matter what you do, you will be sued, and this may well just add another item to the laundry list of causes of action upon which to sue. But the best defense is a good offense, and a strong census and complete count will assist in making legal and balanced judgments.

It is no less important that Montana have an accurate and complete count of 100% of the populations for legislative redistricting, but the adjustment may affect other issues. Case law and Commission practice in the past have used a  $\pm 5\%$  deviation from the ideal population legislative district in order to comply with the "one person, one vote" provision inherent in the Equal Protection clause and create districts that meet other traditional criteria. The state's total population will be apportioned into 100 House districts and redistricted accordingly. If urban areas, in Montana terms, are well counted and rural areas not well counted, the reality of the loss of population in rural areas will only be exacerbated and the effects of redistricting more dramatic.

Even as we speak, the litigation over the Voting Rights Act of 1965 and the 1993 Districting and Apportionment plan has not been finally resolved. It is vital that the Commission has the best data with which to redistrict the state, especially areas with minority populations, including the Indian reservations and their overlapping counties, in order to best comply with the Voting Rights Act of 1965 and assure that no one's opportunity for representation is diluted.

#### **WHAT ARE THE RAMIFICATIONS ON FEDERAL FUNDS?**

The final ramification of a good census count is the apportionment of federal funds to the states. Twenty-two of 25 large formula grant programs rely, at least in part, on data derived from the census to apportion funding among states and local governments. Medicaid is the single largest program, accounting for 90% of all funds reallocated, but approximately 8% of highway funds are also allocated based on census population figures. Funding would generally shift from the northeastern and midwestern states to southern and western states using adjusted population counts. Montana would benefit from this adjustment, based on the General Accounting Office analysis and use of 1990 undercount data, by an estimated 0.32% or \$1,876,000. In the national picture, this is only a fraction, especially when it is up against much more populated states with a greater quantity of representation in Congress, but it nonetheless further illustrates that there is a cost to Montana of any undercount.

#### **CONCLUSION**

The basic moral to this story is to build a strong foundation that is based on the census that will occur on April 1, 2000. It is vital to get the word to everyone that it is in our collective best interest to be counted. All persons need to participate. The Internal Revenue Service, Immigration and Naturalization Service, and other state and federal agencies are prohibited by law from using census information to identify

individuals, so everyone can be assured that there will be no reprisals for participating. Data reported for districting and apportionment purposes is grounded in geographical location, but no personal identifying information is released. The Census Bureau uses mathematical formulas to determine when a geographic area has too few persons in which it can safely reveal aggregate data, and aggregates it up to a higher level where anonymity can be assured.

The Governor will be appointing shortly a Montana Statewide Complete Count Committee for Census 2000 comprised of representatives from state, tribal, and local governments; media, community, and religious organizations; and business. Each community is the best suited entity to assure that all of the people that live in their community are counted. This statewide effort is in addition to the Census Bureau's partnerships with minority representatives and programs for people who live in nontraditional housing units such as colleges, nursing homes, military, overseas, transient lifestyles, homeless shelters, and any other place where people reside to decrease an undercount. There will be an ability to walk in and be counted if you don't think that you have been counted, and a method to determine if any duplication occurs. The Census Bureau states that the decennial census is the largest national peacetime effort and will even generate many short-term jobs in the state and in our communities. In general, wherever you are, stand up and be counted!

*"Eighty percent of success is showing up."*

Woody Allen



## **INTERIM CALENDAR**

### **SEPTEMBER**

September 6, Labor Day, holiday

September 9-10, State Administration, Public Retirement Systems, and Veterans' Affairs Committee, Fort Harrison, Helena

September 16-17, Law, Justice, and Indian Affairs Committee, Billings

September 17, Legislative Council

September 22-23, Environmental Quality Council, Libby

September 23, Revenue and Taxation Committee, Dept. of Transportation, Room 201, 2701 Prospect Ave., Helena

September 24, Electrical Utility Restructuring Transition Advisory Committee, Federal Building, Helena, 10 a.m.

September 30, Postsecondary Education Policy and Budget Subcommittee, Federal Building, Room B7, 9 a.m.

September 30, Local Government Subcommittee, Federal Building, Room 489, 1 p.m.

### **OCTOBER**

October 1, Education and Local Government Committee, Federal Building, B7, 9 a.m.

October 6, Mental Health Managed Care Subcommittee

October 7, Legislative Finance Committee

October 8, Business, Labor, and Agriculture Committee

October 11, Columbus Day observed, holiday

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